

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Gila Electronics Inc.)	File Number: EB-09-SD-0057
)	
Licensee of Station WNTB570)	NAL/Acct. No.: 201032940002
Yuma, Arizona)	
)	FRN: 0001596345
)	
)	

FORFEITURE ORDER

Adopted: January 23, 2012**Released: January 24, 2012**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of three thousand, two hundred dollars (\$3,200) to Gila Electronics Inc. (“Gila”), licensee of Private Operational Fixed Point-to-Point Microwave Radio Station WNTB570, for willful and repeated violation of section 1.903(a) of the Commission’s rules (“Rules”).¹ The noted violations involve Gila’s operation of Station WNTB570 at an unauthorized location, and its provision of a private carrier service not in accordance with the rules applicable to its particular radio service.

II. BACKGROUND

2. On September 24, 2009, agents from the Enforcement Bureau’s San Diego Office (San Diego Office) conducted a routine inspection of FM Broadcast Radio Station KUKY(FM), Wellton, Arizona, at their main studio location at 2433 E. Palo Verde St. Yuma, Arizona. During the inspection, the agents discovered what appeared to be a 950 MHz studio-to-transmitter link in operation, which was relaying the broadcast program material from the Station KUKY(FM) main studio to the FM transmitter site at Telegraph Pass near Wellton, Arizona. The staff at Station KUKY(FM) advised that the transmitter was installed by Gila Electronics Inc., a local communications company, before Station KUKY(FM) became operational on May 20, 2009.

3. Gila was contacted by telephone and a technician was dispatched to Station KUKY(FM). The technician stated that Gila was providing technical support to Station KUKY(FM), including the installation of the transmitter, and provided a copy of the license for Station WNTB570 which authorized operation on 956.65 MHz as a Private Operational Fixed Point-to-Point Microwave radio station under Subpart H of Part 101 of the Rules.² The licensed location for Station WNTB570 was listed as Telegraph Pass near Wellton, Arizona with geographical coordinates of 32° 40' 22.1" north latitude and 114° 20' 16.7" west longitude. However, the microwave station was installed at the studio of KUKY(FM), located at 2433 E. Palo Verde St., Yuma, Arizona, with approximate geographical coordinates of 32° 40' 36" north latitude and 114° 35' 33" west longitude, a distance of approximately 24 km from the licensed

¹ 47 C.F.R. § 1.903(a).

² 47 C.F. R. Subpart H, Part 101.

location for Station WNTB750. The San Diego agents confirmed that a signal on 956.65 MHz was emanating from Station KUKY(FM)'s main studio location and noted that a directional microwave antenna was mounted atop the roof of the studio building, aimed towards Telegraph Pass, and emitting a microwave signal with Station KUKY(FM)'s broadcast programming.

4. On January 27, 2010, the San Diego Office issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of \$4,000 to Gila for failing to operate Radio Station WNTB570 at its authorized location and for providing a private carrier service not in accordance with the rules applicable to its particular radio service, in apparent violation of Section 1.903(a) of the Rules. On February 10, 2010, Gila submitted a response to the NAL requesting reduction of the forfeiture.³

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ section 1.80 of the Rules,⁵ and the *Forfeiture Policy Statement*.⁶ In examining Gila’s response, section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ As discussed below, we have considered Gila’s response in light of these statutory factors and reduce the forfeiture to \$3,200 based on Gila’s history of compliance with the Rules.

6. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission.⁸ Section 1.903(b) provides that the holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization.⁹ At the time of the September 24, 2009 inspection, Gila operated Station WNTB570 from a location inconsistent with the station's authorized coordinates. The distance separating the point of actual operation from the licensed authorized location was approximately 24 km (14.9 miles) -- a difference of approximately 14 seconds of latitude and 15 minutes and 16 seconds of longitude.

7. Gila also appeared to be providing a private carrier service, as defined under section 101.3 of the Rules,¹⁰ to Hispanic Target Media, Inc., licensee of KUKY, an entity that is eligible for licensing under Part 90 of the Rules.¹¹ Pursuant to section 101.135 of the Rules,¹² a licensee of a Private Operational Fixed Point-to-Point Microwave radio station may provide private carrier service “to any eligible entity for licensing under this part, regardless of individual eligibility restrictions, provided that the

³ Letter from Dennis C. Brown, Esq., Counsel for Gila Electronics Inc., to San Diego Office (dated Feb. 4, 2010) (“NAL Response”).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 1.903(a).

⁹ 47 C.F.R. § 1.903(b).

¹⁰ 47 C.F.R. § 101.3.

¹¹ 47 C.F.R. Part 90.

¹² 47 C.F.R. § 101.135.

communications carried are permissible under section 101.603 of the Rules.”¹³ At the time of the *NAL*, section 101.603(a)(7) of the Rules permitted licensees to transmit program material from one location to another only if the frequencies did not serve as the final RF link in the chain of distribution of the program material to a broadcast station.¹⁴ At the time of the inspection, however, Station WNTB570 provided the final RF link to the Station KUKY transmitter site and relayed program material for the broadcast station.

8. Gila does not dispute the facts as stated in the *NAL*. Therefore, based on the evidence before us, we find that Gila willfully and repeatedly violated section 1.903(a) of the Rules by failing to operate Station WNTB570 at its authorized location and by providing an improper private carrier service not in accordance with the rules applicable to this particular radio service.

9. Gila requests that the proposed forfeiture amount be reduced because the violations were not grave and that there were no reports of interference from any other licensee nor was there any substantial potential for interference to any other user given the sparsely populated desert terrain.¹⁵ We find that it is well established that the absence of public harm is not considered a mitigating factor in a rule violation.¹⁶ Gila also requests a reduction of the forfeiture because it has not received a prior violation during its more than twenty-year history.¹⁷ We have examined the record and agree. Accordingly, we reduce the total forfeiture from \$4,000 to \$3,200 based on Gila’s history of compliance with the Rules.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, Gila Electronics Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand, two hundred dollars (\$3,200) for violations of section 1.903(a) of the Commission’s rules.¹⁸

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to section 504(a) of the Act.¹⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A

¹³ 47 C.F.R. § 101.603.

¹⁴ 47 C.F.R. § 101.603(a)(7). We note that the Commission recently amended section 101.603(a)(7) of the Rules and eliminated this prohibition. *See Amendment of Part 101 of the Commission’s Rules to Facilitate the Use of Microwave For Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees*, Report and Order, 26 FCC Rcd 11614 (2011).

¹⁵ *NAL Response* at 1 – 2.

¹⁶ *See Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975) (rejecting a broadcaster’s claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint).

¹⁷ *NAL Response* at 2.

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 1.903(a).

¹⁹ 47 U.S.C. § 504(a).

(payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Gila will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Gila Electronics Inc., 2481 E. Palo Verde Street, Yuma, AZ, 85365, and to Dennis C. Brown, its counsel of record, at 8124 Cooke Court, Suite 201, Manassas, VA 20109.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau